

**FILED**

January 13, 2025

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXASBY: \_\_\_\_\_ NM  
DEPUTY**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION****JESSE DIAZ,****Plaintiff,****v.****CIVIL NO. SA-24-CV-129-OLG****KYLE O'BRIEN,****Defendant.****O R D E R**

The Court has considered United States Magistrate Judge Henry J. Bemporad's Report and Recommendation (the "Recommendation") (Dkt. No. 16), filed on August 9, 2024, concerning Defendant Kyle O'Brien's ("Defendant") Response to Plaintiff's Amended Complaint and Second Motion to Dismiss (the "Motion to Dismiss") (Dkt. No. 12). Neither Defendant nor Plaintiff Jesse Diaz ("Plaintiff") filed objections to the Recommendation.

When no party objects to a magistrate judge's recommendation, the Court need not conduct a de novo review of the entire record. *See U.S.C. § 636(b)(1)* ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendation to which objection is made."); FED. R. CIV. P. 72(b). Rather, the Court need only review the magistrate judge's recommendation to determine whether it is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

The Court has reviewed the Recommendation (Dkt. No. 16) and finds that it should be **ACCEPTED** with one modification. As the Magistrate Judge correctly noted, Plaintiff's claims, muddled as they may be, are barred by *Rooker-Feldman*. *See Rosa v. Hill*, No. 23-cv-129, 2024 WL 3466182, at \*4–5 (E.D. Tex. June 24, 2024) (recommending dismissal under *Rooker-Feldman* in a similar context), *R. & R. adopted*, 2024 WL 3463811 (E.D. Tex. July 18, 2024). Because

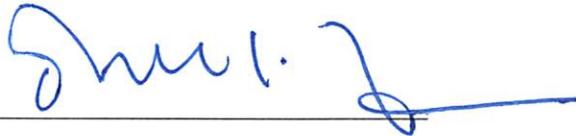
*Rooker-Feldman* is jurisdictional, any dismissal must be without prejudice. E.g., *Union Planters Bank Nat'l Ass'n v. Salih*, 369 F.3d 457, 463 (5th Cir. 2004).

**IT IS THEREFORE ORDERED** that the Motion to Dismiss (Dkt. No. 12) is **GRANTED**, and Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

**IT IS FURTHER ORDERED** that this case is **CLOSED**.

**IT IS SO ORDERED.**

SIGNED this 13 day of January, 2025.



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ORLANDO L. GARCIA  
UNITED STATES DISTRICT JUDGE